

10/25/37

Plaintiff,

-against-

: PLAINTIFF'S RESPONSE TO THE
: FIRST SET OF INTERROGATORIES
: AND FIRST REQUEST FOR
: PRODUCTION BY DEFENDANT
: NINTENDO OF AMERICA, INC.

Defendants.

Interrogatory No. 1

Response to Interrogatory No. 1

(a) The Final Judgment for Damages on Cross-Complaint of Richard Cooper, dated January 5, 1981 ("Cooper Judgment").

A001986

This decreed that, as between Cooper and RKO General, Inc. ("RKO"), Cooper was the owner of all rights in the name, character, and story King Kong except for two one picture licenses granted to RKO (note in particular, paragraph 1 of such Judgment).

(b) The Agreement of December 15, 1976 between Cooper and Universal, under which Cooper assigned to Universal, among other things, all of his rights under the Cooper Judgment and any subsequent judgment.

(c) The Settlement Agreement and Release, dated June 4, 1980, between Universal and RKO, which referred to the rights in the name, character and story of King Kong. Annexed hereto in Document Folder 1 are copies of these documents.

(d) An assignment of causes of action by RKO General, Inc. to Universal dated June 15, 1982.

Interrogatory No. 2

Describe each and every use in commerce of a trade name, trademark, or service mark involving the name, character and story of King Kong in which Universal claims an interest including the dates of such use and the product or service with which such use is associated. Attach specimens of such trade names, trademarks and service marks to your response.

Response to Interrogatory No. 2

As set forth in the documents produced in response to

Interrogatory No. 7

Identify all licensees of the name, character, or story of King Kong. With respect to each license identify:

- (a) the licensing agreement, the licensor, the date of the licensing agreement, and the licensee's last known address;
- (b) the product of service with which the name, character or story of King Kong is associated;
- (c) when and for how long the licensee marketed the product or service to which the name, character or story of King Kong was associated;
- (d) the area in which the product or service was marketed and a description of how the product or service was sold; and
- (e) the revenues derived from each license.

Response to Interrogatory No. 7

See response to Interrogatory No. 2. With respect to Universal's licensees from 1980 to present, said licensees are:

- 1) Ben Cooper Inc., the licensor being Merchandising Corporation of America;
- 2) Tiger Electronics, Inc., the licensor being Merchandising Corporation of America; and
- 3) Coleco Inc., the licensor being Universal.

Copies of the licensing agreements relating to the above licensees are annexed hereto in Document Folders 7 and 8. The Coleco agreement was produced for defendant's attorneys by letter dated October 20, 1982.

With respect to the Ben Cooper license, MCA has received revenue to date of \$3,298.04. For a statement of revenues received in connection with the Tiger license, see the response to Interrogatory No. 13.

Interrogatory No. 8

Identify all documents that relate to the negotiations

lawsuits against some distributors of these games, alleging copyright infringement. Universal intends to take action (including demands to cease and desist and lawsuits, if necessary) against the distributors and manufacturers of these games, if feasible, consistent with the outcome of this action.

Interrogatory No. 28

Apart from the video arcade games referred to in Interrogatory No. 27 and Donkey Kong, state whether plaintiff is aware of any other video arcade games which involve a gorilla, ape or monkey character. If so, briefly describe such games and any action Universal has taken with respect to such games..

Response to Interrogatory No. 28

Universal is aware of two such games: the games sold by Tiger Electronics called "King Kong", Tiger herein licensed the name "King Kong" from Universal; and a game called "Beauty & the Beast". With respect to "Beauty & the Beast", see response to Interrogatory No. 27.

Interrogatory No. 29

State when Universal first became aware of the video arcade game Donkey Kong.

Response to Interrogatory No. 29

Universal first became aware of the video arcade game

A001989

Donkey Kong on or about April 1, 1982.

Interrogatory No. 30

Identify what actions were taken by Universal with respect to the video arcade game Donkey Kong after Universal first became aware of the game and state with particularity when such actions were taken.

Response to Interrogatory No. 30

Universal demanded that defendant Nintendo Co., Ltd. and Coleco Industries, Inc. cease and desist violating Universal's rights in King Kong by manufacturing and selling the game Donkey Kong in a telex directed to these parties dated April 28, 1982. A copy of this telex is annexed hereto in Document Folder 30. Nintendo Co., Ltd. refused to cease its activities, and Universal commenced this lawsuit on June 29, 1982.

Interrogatory No. 31

Identify when and how Universal gave formal notice to defendants of Universal's trademark rights as alleged in paragraph 18 of the Complaint. If documents reflect this demand, identify any such documents.

Response to Interrogatory No. 31

See response to Interrogatory No. 30.

A001990

Response to Interrogatory No. 38

See response to Interrogatory No. 36. -

Interrogatory No. 39

Does Universal claim any right, title or interest in the story King Kong. If so, state the nature of this right, title, or interest and identify all documents that relate to this right, title, or interest. In addition, identify any recordation of such story in which Universal claims an interest whether it be recorded in print, film, audio or other medium.

Response to Interrogatory No. 39

Yes, see response to Interrogatory Nos. 4 and 25.

There are no responsive documents of which Universal is aware except (a) those referred to in the response given to Interrogatory Nos. 1 and 2 and (b) perhaps other documents in the RKO litigation which Universal's attorneys are in the process of obtaining. The story of King Kong includes the pictorial representation of the large gorilla King Kong holding the heroine captive atop a skyscraper. The story of King Kong in which Universal claims an interest has been recorded in the following motion pictures: "King Kong" (1933) and "King Kong" (1975). Further, the King Kong character is depicted in the motion pictures, "King Kong vs. Godzilla" and "King Kong Escapes", and in an animated television series titled "The King Kong Show".

Interrogatory No. 40

State with particularity the secondary meaning which

Universal contends has attached to the name, character or story of King Kong identifying specifically the individuals or entities which the public identifies as the origin or source of the name, character or story of King Kong.

Response to Interrogatory No. 40

The secondary meaning Universal contends has attached to the King Kong name, character and story is that the public associates the name King Kong, character (i.e., the King Kong gorilla) and the King Kong story (including the pictorial representation of the King Kong gorilla atop a skyscraper, holding a woman captive) with the motion pictures entitled "King Kong" and with the makers of those motion pictures, to whose rights Universal has succeeded. Universal contends that the King Kong name, character and story have commercial magnetism, and that use of these elements in connection with goods or services causes consumers to believe that the makers of King Kong motion pictures sponsored or otherwise approved of such use.

Interrogatory No. 41

Identify any business entity, vocation, occupation, or other activity or activities to which Universal contends the trade name "King Kong" has attached.

Response to Interrogatory No. 41

See responses to Interrogatories Nos. 2, 3, 7, 10, 11 and 16.